

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>NATIONAL ROOFING INDUSTRY</b>	)	
<b>PENSION PLAN and JOHN MARTINI,</b>	)	
<b>as Trustee of the National Roofing Industry</b>	)	
<b>Pension Plan,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Case No. 4:05CV2305SNL</b>
<b>v.</b>	)	
	)	
<b>JOHN CONNELLY ROOFING CO., INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM**

Plaintiffs have filed this breach of contract action seeking to collect fringe benefit contributions from defendant allegedly due and owing the plaintiffs, pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.A. §§1132 and 1145; and pursuant to §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185. This matter is before the Court on the plaintiffs' motion for summary judgment on the issue of liability (#11), filed August 15, 2006. As of today's date, defendant has failed to file a response.

Plaintiff Pension Fund is an employee benefit plan to which defendant is contractually obligated to submit fringe benefit contributions. Defendant failed to submit to the plaintiff Pension Fund all such contributions due and owing under the respective contract; i.e. the collective bargaining agreement (CBA) between defendant and The United Union of Roofers, Waterproofers & Allied Workers, Local Union No. 2, A.F.L.-C.I.O. (Local 2). Plaintiff contends that, pursuant to the CBA, defendant is liable to the Pension Plan, for the time period August 2001 through February 2006, the following amounts:

a. Unpaid contributions	\$119,787.94
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b. Liquidated damages	\$56,203.51
c. Interest	\$68,953.01 (computed through August 15, 2006)
d. Costs	\$ 955.97
e. Attorneys' Fees	\$15,293.80

Plaintiff further contends that on March 15, 2005 defendant entered into a Settlement Agreement with the Pension Fund. Pursuant to the Settlement Agreement, defendant acknowledged liability to the Pension Fund in the amount of \$87,379.17 in unpaid contributions; \$42,322.17 in liquidated damages, \$50,106.67 in interest (through March 15, 2005 and continuing to accrue until paid in full); and \$8105.12 in costs and attorneys' fees. Furthermore, pursuant to the Settlement Agreement, defendant agreed to pay the sums set forth above in monthly installment payments of \$5000.00. Furthermore, defendant agreed to timely pay all regular monthly contributions as they became due pursuant to the subject CBA. Finally, pursuant to the Settlement Agreement, the Pension Fund agreed to forgo immediate collection of the full amount of the delinquency noted above.

Defendant has made the required monthly installment payments for the months of March through June 2005. However, no further payments have been made starting with July 2005 to date.<sup>1</sup>

Upon review of the court file and the submitted pleadings and exhibits, and in light of the defendant's failure to respond to the summary judgment motion, the Court finds that no material issue of disputed fact exists regarding the defendant's breach of its contractual obligations to the Pension Fund during the period of March 1, 2001 through February 28, 2006. However, the Court also observes that no material issue of disputed fact exists regarding the

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<sup>1</sup>Plaintiffs have submitted with their motion and memorandum in support Exhibits A-D consisting of the calculations for the amounts due and owing, said CBA, said Settlement Agreement, and affidavit in support of attorneys' fees and costs.

defendant's four (4) monthly installment payments (March-June 2005) in the total amount of \$20,000.00. Thus, the Court finds that defendant has breached its contractual obligations and is liable to the Pension Fund for delinquent and unpaid contributions for varying work months from August 2001 through February 2006, minus the contributions made for March 2005, April 2005, May 2005, and June 2005.

Thus, the Court finds that summary judgment on the issue of liability, as set forth above, will be entered against defendant. However, the Court will not enter a monetary judgment until a current accounting, in accordance with the Court's ruling, is submitted to the Court for review.

Dated this 15th day of September, 2006.

  
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SENIOR UNITED STATES DISTRICT JUDGE